



## 8. WARRANTY

8.1 The Seller warrants that the Products furnished hereunder shall, at the time of delivery, be free from defects in material and workmanship. Services shall be performed with reasonable skill and care.

8.2 The Buyer shall submit to the Seller reasonable written details (on Seller's prescribed form if required) establishing a breach of the warranty set forth above. Unless agreed otherwise by the Seller in writing, the Seller's liability for failure of any Product or Service to comply with the foregoing shall be limited to replacing or repairing that Product and/or to re-performing the Services found to be defective within six (6) months of delivery. Such Product will be repaired or replaced, at the Seller's option, or Services re-performed, without charge, and re-warranted for the remainder of the original warranty period.

8.3 The Seller shall pay all reasonable return packaging and transportation costs of a valid warranty claim. The Seller is not liable for the removal of Products from, or installation of the Product into, any other property to which it may be attached or incorporated.

8.4 If requested by the Seller, the Buyer shall promptly deliver back to the Seller any Product and/or materials which have been replaced and legal title to the replaced Product shall re-vest in the Seller.

8.5 The Seller's performance of one of the options set out in Section 8.2 shall constitute an entire discharge of the Seller's liability for breach of the warranty at Section 8.1.

8.6 For Product that is returned under warranty and is tested and no fault found, the Seller will be entitled to reimbursement from the Buyer for reasonable charges incurred for transportation, testing and evaluation.

8.7 For any Product not manufactured by the Seller, the Buyer shall only be entitled to the benefit of any warranty or guarantee given by the manufacturer to the Seller, to the extent that it is assignable by the Seller to the Buyer.

8.8 The Seller shall not be liable for a breach of the warranty at Section 8.1 in any of the following circumstances:

- (i) Products or parts thereof have been modified, altered, installed, used or serviced other than in conformity with the Seller's applicable specifications, manuals, bulletins or written instructions, or which shall have been subjected to improper installation, misuse or neglect;
- (ii) Products have not been maintained and operated in accordance with the Seller's instructions;
- (iii) normal wear and tear, willful or accidental damage, harsh environment or experimental running;



(iv) Products or parts thereof have been furnished by the Buyer or acquired from others at the Buyer's request and/or to the Buyer's specifications, and any use or incorporation of components not manufactured by or authorized by the Seller in the Products; (v) Products are expendable in nature, such as, but not limited to, diodes, transistors, o-rings, tyres, flexible hoses, seals, igniter plugs or fuses; (vi) Products with a stated shelf life or 'use by' date, if such shelf life has expired or 'use by' date has passed;

(vii) tooling purchased or made for the purpose of manufacturing the Products; (viii) the Buyer or its customer fails to afford the Seller a reasonable opportunity to inspect the Products or Services; (ix) the price for Products or Services, or any other goods or services supplied by the Seller or its affiliates, has not been received in full.

8.9 Minor deviations from specifications which do not affect performance of the Products shall not be deemed to constitute defects in materials or workmanship or a failure to comply with the specifications referred to herein. The need for regular overhaul of Products shall not constitute a defect or failure for the purposes of the warranty at Section 8.1.

8.10 In relation to any software that may be incorporated into the Products, the Seller gives no warranty that:

- (i) the functions of the software will meet the Buyer's requirements or will enable it to attain the objectives the Buyer has set for itself,
- (ii) the software will operate in the combination or environment selected for use by the Buyer, or
- (iii) the operation of the software will be uninterrupted or free of errors. The Buyer shall be solely responsible for the results produced by the software and ensuring that the results comply with the Buyer's specified requirements.

**8.11 OTHER THAN AS SET OUT IN SECTION 8.1, ALL WARRANTIES, CONDITIONS, TERMS, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED FROM THE CONTRACT.**

## **9. EXCLUSION AND LIMITATION OF LIABILITY**

9.1 These terms and conditions set out the entire liability of the Seller (including any liability for the acts or omissions of its subcontractors) in respect of Products and/or Services supplied by the Seller and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

9.2 Nothing in these terms and conditions shall exclude or limit the Seller's liability for death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation or for any liability that cannot legally be excluded or limited. ANY LIMITATION OR EXCLUSION OF LIABILITY SHALL APPLY TO THE EXTENT PERMITTED UNDER APPLICABLE LAW.



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9.3 THE SELLER SHALL NOT BE LIABLE FOR: (1) ANY LOSS OF ANTICIPATED PROFITS, (2) ANY LOSS OF ACTUAL PROFITS, (DIRECT OR INDIRECT), (3) ANY LOSS OF ANTICIPATED SAVINGS, (4) ANY LOSS OF BUSINESS, (5) ANY ECONOMIC LOSS OF WHATEVER NATURE, (6) ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED, (7) ANY LOSS ARISING AS A RESULT OF ANY THIRD PARTY BRINGING A CLAIM OF ANY NATURE WHATSOEVER, AND/OR (8) ANY LOSS RESULTING FROM USE, APPLICATION OF OR RESULTS OBTAINED FROM ANY SOFTWARE INCORPORATED INTO THE PRODUCTS. THE SELLER SHALL NOT BE LIABLE FOR ANY SUCH LOSS WHETHER OR NOT ANY SUCH LOSS OR DAMAGE WAS FORESEEN, DIRECT, FORSEEABLE, KNOWN OR OTHERWISE.

9.4 SUBJECT TO SECTION 9.2, THE TOTAL AGGREGATE LIABILITY OF THE SELLER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT WHETHER FOR NEGLIGENCE OR BREACH OF CONTRACT OR ANY CAUSE WHATSOEVER SHALL IN NO EVENT EXCEED THE PRICE PAID BY THE BUYER FOR THE PRODUCT OR SERVICES GIVING RISE TO THE BUYER'S CLAIM. NOTWITHSTANDING ANY OTHER TERMS AND CONDITIONS OF THE CONTRACT, THE SELLER SHALL HAVE NO LIABILITY FOR THE USE BY THE BUYER OF COMPONENT PARTS INCLUDING SOFTWARE IN THE PRODUCT WHICH ARE NOT MANUFACTURED BY OR AUTHORISED BY THE SELLER.